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MAILED

MAY 17 2006

In re Application of:) **TECHNOLOGY CENTER 2100**
James P. KARDACH)
Application No. 09/821,347) **DECISION ON PETITION**
Filed: March 29, 2001) **UNDER 37 CFR § 1.181**
For: METHOD AND APPARATUS FOR)
PROCESSING REAL-TIME EVENTS ASSOCIATED)
WITH A WIRELESS COMMUNICATION)
PROTOCOL)

This is a decision on the Request for Reconsideration and Withdrawal of Finality of Office action filed on 03 February 2006. The Request filed 03 February 2006 has been treated as a petition under 37 C.F.R. § 1.181 to review the prematurity of Final rejection mailed on 31 October 2005.

The petition is **GRANTED**.

On 17 August 2005, applicant filed a RCE and an amendment to claims 1, 3, 14 and 19-21. New limitations "wherein the first portion comprises a real-time event circuit to initial execution of a real-time event handler" and "using a real-time event handler initiated by a real-time event circuit within the processor, the processing of the event allowing to maintain the wireless communication protocol" were added to independent claims 1 and 14, respectively.

On 31 October 2005, the examiner finally rejected all claims 1-21 in the first Office action.

On 03 February 2006, petitioner contended that the new limitations added to claims 1 and 14 are to distinguish the amended claims from the cited prior art. Thus, the action immediately subsequent to the filing of RCE may not be made final.

MPEP § 706.07(b) states in part that:

The claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application...

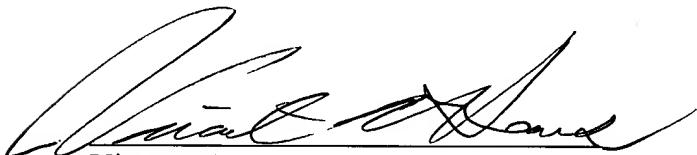
MPEP § 706.07(h)(VIII) states that:

The action immediately subsequent to the filing of an RCE with a submission and fee under 37 CFR 1.114 may be made final only if the conditions set forth in MPEP § 706.07(b) for making a first action final in a continuing application are met.

A review of the file indicates that the new limitations added to claims 1 and 14 are not drawn to the same invention as claimed in the earlier amendment filed 12 November 2004. Further, the amendment with the new limitations added to claims 1 and 14 would be required further search and/or consideration if it were presented as an amendment after final Office action.

For the above stated reasons, the petition is **GRANTED**. The final Office action mailed on 31 October 2005 is hereby withdrawn and changed to non-final Office, and applicant's response filed on 03 February 2006 has been treated as a response to the non-final Office action. The RCE filing fee paid on 06 February 2006 is hereby credited to Deposit Account No. 02-2666.

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3613.



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